

SJ 7 Workgroup
Meeting Minutes
October 23-24, 2007

- I. Opening: Workgroup meeting convened at approximately 12:15. Jeff Buska welcomed the group and thanked them for their interest and participation on this workgroup. Introduced Director Joan Miles for opening comments. Director Joan Miles stated many people responded to the call for the work group. She said many people commented on the importance of this issue and the details of it that needed to be addressed. Joan thanked everyone for their interest, and identified this is a complex topic with many issues that will be addressed by the workgroup.
- II. Workgroup members were introduced and provided some background on their interest and involvement in the workgroup. Those in attendance included: Betty Beverly, Montana Senior Citizen's Association; Grace Bowman; Webb Brown, Montana Chamber of Commerce; Gayla Brown, MSN, RN, Elkhorn Health and Rehab; Jerry Daugett, Living Life (substituting for Kim); Tom Gregg, St Peters Hospital; George Groesbeck, AWARE; Mike Hanshew, Montana Health Solutions; Rose Hughes, MHCA; Stu Lekander, Easter Seals; Shirley Powell; Karolyne Redding, PHR, Waterford; Bob Ross, South Central Mental Health Center; Claudia Clifford, AARP (substituting for Al Ward); Jeff Buska, QAD; Jill Caldwell, QAD; Becky Fleming-Siebenaler, QAD.

Workgroup member absent: Casey Blumenthal, MHA. Webb Brown was absent October 24.

Interested Parties Present: Joan Miles, DPHHS; Laura Janes, Kendra Rose, Abby Hulme, Marilyn Kelly-Clark, Barb Swehla, Pat Bik, Steve Barr, Rick Norine.
- III. Review SJ 7 Resolution. Jeff began a discussion and review of the SJ7 resolution and asked Mike Hanshew to provide some background on the legislation. Mike worked with Senator Lind and others on the resolution and provided the workgroup with useful information on how the legislation was crafted that brought the workgroup together. Jeff said that our partners in this legislation are DOJ (Department of Justice), and we are also working with DLI (Department of Labor and Industry) and DOC (Department of Corrections) to coordinate efforts and resources.
- IV. The resolution has six points to be addressed by the workgroup. In this meeting, the workgroup will address the first two, which are: identifying programs and services and a definition of a direct care worker.

Jeff (QAD) introduced a proposed a timeline for subsequent workgroup sessions (copy attached). The goal is to have this process finalized in March 2008 and a draft report with recommendations prepared. The time between March and the next legislative session (January 2009) will be used to finalize the report and work on any necessary language for legislation. The workgroup will identify information and work they would like addressed in addition to those outlined in the resolution.

- V. Jeff introduced the survey results the department prepared. (Copy of which was posted on the website and provided in advance of the meeting). The work group discussed the results from this survey of other states. The work group discussed and asked the department to prepare more detailed information, a side by side comparison of selected states. It was suggested by Tom Gregg that this was useful when he participated in a similar process in Minnesota. The workgroup discussed this and agreed on the following ten specific states: Alaska*, Arizona, Idaho*, Kansas, Minnesota, Nevada*, New Mexico*, Oregon, Oklahoma, and Washington. (starred states are part of the CMS pilot project).

Workgroup discussions included additional questions and a request to obtain more information from the surveyed states identified above, including: How often are background checks done? Do they have an exception for consumer directed care? Who gets the results? and who pays for the background check? Additional discussion on the survey results revealed additional questions and concerns that need to be addressed including: Are we going to tell businesses who they cannot hire? Who has the liability for not hiring (or hiring) somebody? The workgroup asked if we are expecting to put this into rules or statute. Are background checks transferable for a period of time? Can employees work pending a background check? Can employers grandfather in existing employees? If employers need to perform background checks on existing employees, will the results be treated the same? Who pays the cost of the background check? How long it takes to get a background check? What is the source of the background check? Is there a concern regarding identity theft?

Becky (QAD) clarified how the process works at Child Care Licensing (CCL). The employer learns that there is a disqualifying event, but not the details of the disqualifying event. Privacy concerns outweigh the public's right to know in this case. CCL does an FBI check for anyone living out of the state for the previous five years, other wise the background check is done through MT DOJ.

The workgroup will develop parameters on how the statute should look. The group discussed and agreed that the statute or rules should be uniform across DPHHS; different divisions of DPHHS should not have different statutes /rules /requirements. All vulnerable populations deserve the benefit of this legislation. The group's goal is to work on legislation that will get passed at the legislature, and not be too broad to cause it to fail.

- VI. Jeff introduced and identified the work the agency prepared on disqualifying events as identified in the State surveys. This was a one page table titled "Chart: Exclusionary criteria for the varying states" dated October 23, 2007. (Copy attached). The purpose of this chart is to introduce the topic for thought and consideration by the workgroup. This topic will be discussed in more detail at the next meeting. The chart for the varying states was discussed briefly and the workgroup asked for more specific information on specific crimes and asked the department to prepare a comparison of a smaller group of states that have disqualifying events. In addition, the workgroup requested the department to prepare a proposal for their consideration and discussion of disqualifying events based upon Montana law.

Break

- VII. The next item on the agenda for consideration and discussion was to identify and define all programs or services funded or regulated by DPHHS where criminal background checks might be required. Jeff pointed to the language in line 24 and 25 of the resolution as broad language for the program and services that is provided, funded, or regulated by DPHHS. Recognizing the fact it is also associated with the term "direct-care staff person" which also needs to be defined. Jeff introduced an inventory by DPHHS division of all the programs or services that are provided, funded or regulated by DPHHS (copy attached). The workgroup proceeded to review this handout to identify the programs and services they believe were intended to be covered by this project. The group began with the Quality Assurance Division and decided that a list of those services which would be excluded would be easier to devise than a list of which services would be included. That list was discussed at length, although agreement was reached to exclude some services. A summary will be reviewed at the next work group meeting.

The group discussed types of facilities and classifications of staff in those facilities that might need to have background checks. The group discussed the definition of facilities, direct care workers, and vulnerable populations. Jeff identified it was time for public comment and suggested the group continue the discussion later.

- VIII. Public Comment:
Marilyn Kelly-Clark, BLI – Talked about the concerns of the licensed programs. The Licensing boards attached to DLI already have the statutory authority to require background checks. Most have not taken advantage of this authority, but a few are considering it.

- IX. Summary and Adjourn

October 24, 2007

Workgroup meeting convened at approximately 8:15 am

- X. Discuss and Define Direct Care Worker. The workgroup continued the review of the DPHHS inventory and switched from identifying excluded services to those they intended to include in the background check requirement. The discussion included debates regarding who in which facilities would be defined as a direct care worker. The workgroup asked staff to provide definitions from other states. The group also requested information from the other states on how many background checks are conducted and how many result in hits where a disqualifying event was identified. Discussion resulted in a realization that the programs and services are broad in DPHHS and a concern of the number of providers and people this will affect. The workgroup debated the likelihood of success of bill passing the legislature that was extremely broad in nature and covered all these program and services in DPHHS. The discussion included identifying the settings that may require background checks for all staff, as opposed to looking at just position titles. Settings that may require a background check included those with an assessment of risk where the children, aged, disabled, or mentally ill are vulnerable in a service setting such as the home or in

custodial care, such as: residential service, Licensed health care facilities, Nursing homes, Assisted living facilities, Group homes, Residential treatment facilities, Day services (it is a form of custodial care), Hospitals.

The group worked on a draft of a working definition of a direct care access employee: Direct care access employee definition: an unlicensed person who works in private or licensed residential settings, licensed health care facilities, or day service programs that involve direct contact with a client, patient or resident. Department staff was assigned the task to work on this definition by comparing other states definitions and prepare proposal for review and discussion at the next meeting. The workgroup concluded the discussion and opened the meeting for public comment.

- XI. Public Comment. Marilyn Kelly-Clark, DLI. Wanted to clarify that for the Social Workers, background checks are a requirement of licensure, and the applicant pays the background check fee; the check is only done once.

Abby Hulme, SLTC. She asked that the work group think about the work force issues. Montana has a real shortage of workers, and most workers in these setting are less than full time employees.

Kelly Williams, SLTC, asked about who maintains background check records. DOJ clarified that DOJ does not maintain a central repository for finger print records that are not criminally related.

- XII. Summary. The workgroup will continue to work on definition of direct care worker, settings, and a licensed health care facility. The department will prepare additional survey information for the selected states and address the additional questions. In addition, the department will prepare additional information regarding disqualifying events and prepare a proposal for Montana based upon Montana laws.

The department will follow up on a request of the workgroup regarding statistics (if available) on how many disqualifying events are turned up in states that do background checks. The group also discussed that it would be helpful if it could be determine how many disqualifying events turn up in state only checks as compared to FBI fingerprint checks.

Next work group scheduled for December 4-5, 2007, in the Wilderness Room of the Colonial Building. The meeting will begin at 1:00 P.M.

- XIII. Meeting adjourned.

SENATE JOINT RESOLUTION NO. 7 (SJ7)
PROPOSED TIMELINE
OCTOBER 17, 2007

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE DEPARTMENT OF JUSTICE TO EXAMINE REQUIRING CRIMINAL BACKGROUND CHECKS FOR DIRECT-CARE WORKERS AND TO PROVIDE A PROPOSAL TO THE 61ST LEGISLATURE.

BE IT FURTHER RESOLVED, that the final proposal resulting from the study, including any findings, conclusions, comments, or recommendations be reported to the 61st Legislature.

PROPOSED TIMELINE

- July 2007: DPHHS begins work on planning study.
- August and September: DPHHS survey other States
- September 2007: Workgroup formed.
- October 2007: DPHHS posts summary and information from State survey
- October 23-24, 2007: First meeting of workgroup
- Late November or Early December 2007: Second meeting of workgroup (TBD)
- January 2008: Third meeting of workgroup (TBD)
- February 2008: Fourth meeting of workgroup (TBD)
- March 2008: Completion of proposal from the study and workgroup meetings. Review and approval of proposal by workgroup. (Final meeting or need for additional meetings TBD)
- April 2008 - August 2008: Draft legislation with Legislative Services and DPHHS Legal Services.
- September 2008 – November 2008: Review & present proposal to Governor's Office and the Children and Families Interim Committee. Which is a joint bipartisan committee of the Legislature that meets between legislative sessions to monitor the Department of Public Health and Human Services; conduct interim studies; and generally review issues related to health and human services.
- December 2008: Provide Legislative Services with final proposal and options for distribution, including a draft of legislation.

Program or service that is provided, funded, or regulated by DPHHS

ADDICTIVE AND MENTAL DISORDERS DIVISION

- Home And Community Based Services Waiver
- Mental Health Block Grant
- Mental Health Medicaid Program
- Mental Health Services Plan
- Mental Health PATH grant
- Mental Health Advisory Council
- Mental Health Professional Person Information
- Substance Abuse Prevention and Treatment Block Grant
- SPF-SIG
- Prevention Needs Assessment
- Tobacco Media Prevention Programs for MTUPP
- Methamphetamine and Chemical Dependency Residential Treatment Expansion
- Montana State Hospital
- Montana Chemical Dependency Center
- Montana Mental Health Nursing Care Center

BUSINESS AND FINANCIAL SERVICES DIVISION

- Vital Records Services (birth certificate issuance)

CHILD AND FAMILY SERVICES DIVISION

- Foster parent
- Foster Care Independence Program
- State licensed, private adoption agencies
- Child abuse
- SSI
- Title IV-E

CHILD SUPPORT ENFORCEMENT DIVISION

- Locating absent parents
- Establishing paternity
- Establishing financial and medical support orders
- enforcing child, spousal and medical support orders
- Modifying child support orders
- Receive and distribute child and spousal support payments

DISABILITY SERVICES DIVISION

- Developmental Disabilities Program
 - Adult Community Services
 - Children's Services
- Disability Determination Services
- Montana Developmental Center
- Montana Telecommunications Access Program
- Montana Vocational Rehabilitation Program
 - Blind & Low Vision Services
 - Vocational Rehabilitation Services

HEALTH RESOURCES DIVISION

- Children's Mental Health
 - Inpatient Psychiatric Services
 - Community-Based Services
 - Mental Health Community-Based Outpatient Services
 - Services Provided By Mental Health Professionals
- Children's Health Insurance Plan (CHIP)
- Primary care and PASSPORT to Health managed-care services
- Big Sky Rx Program
- Nurse First
- Pharmacy Program Outreach
- Medicaid Services
 - Ambulance
 - Ambulatory Surgical Center
 - Audiologist
 - Chemical Dependency
 - Children's Special Health Services
 - Chiropractor (QMB)
 - Clinic (Freestanding Dialysis)
 - Clinic (Public Health)
 - Dentist
 - Denturist
 - Dialysis Clinic (Freestanding)
 - Dialysis (Home)
 - Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)
 - EPSDT
 - Eyeglasses
 - Federally Qualified Health Care Center (FQHC)
 - Group/Clinic
 - Hearing Aid
 - Home and Community Based Services
 - Home Dialysis
 - Home Health
 - Home Infusion Therapy

- Hospice
- Hospital (Inpatient)
- Hospital (Outpatient)
- Independent Diagnostic Testing Facilities (IDTF)
- Indian Health Services (IHS)
- Lab and Imaging
- Licensed Professional Counselor
- Mental Health Center
- Mid-Level Practitioner
- Nursing Facility
- Nutritionist (EPSDT)
- Occupational Therapist
- Optician
- Optometric
- Oral Surgeon
- Personal Assistance
- Pharmacy
- Pharmacist
- Physical Therapist
- Physician
- Podiatrist
- Private Duty Nursing (EPSDT)
- Psychiatrist
- Psychologist
- Public Health Clinic
- Residential Treatment Center
- Rural Health Clinic
- School Based Services
- Social Worker
- Speech Therapist
- Swing Bed
- Targeted Case Management (Mental Health)
- Targeted Case Management (Non-Mental Health)
- Therapeutic Foster Care
- Therapeutic Group Home
- Transportation: Ambulance
- Transportation: Personal Transportation and Per Diem
- Transportation: Commercial and Specialized Non-Emergency
- Medicaid Mental Health Services
 - Inpatient psychiatric services provided in hospital settings or residential treatment facilities
- Community-Based Services
 - Licensed foster and therapeutic group homes
- Mental Health Community-Based Outpatient Services
 - Individual, group and family therapy; psychotropic medication monitoring; assessment; case management; youth day treatment; community-based psychiatric

rehabilitation and support services; and comprehensive school and community treatment

- Services Provided by Mental Health Professionals
 - Licensed psychologists, social workers, licensed certified professional counselors, and licensed psychiatrists or medical doctors

HUMAN AND COMMUNITY SERVICES DIVISION

- Best Beginnings Childcare Scholarships
- Best Beginnings Quality Programs
- Child and Adult Care Food Programs
- Head Start
- Early Childhood Comprehensive Systems
- School Readiness
- Temporary Assistance for Needy Families (TANF)
- WoRC Program (TANF Employment and Training)
- Accelerated Employment Services
- Family Economic Security Contracts
- Child-Care Programs other than CCDF
- Food Stamps
- Food Stamp Nutrition Education Program
- Food Stamp Education and Training Program
- Food Bank Outreach Contracts
- Refugee Program
- Medicaid Eligibility
- MEDS Contract
- Weatherization Program
- Low Income Energy Assistance Program
- Commodities Distribution Program
- Community Services Block Grant
- Homeless Grant
- Housing Opportunities for Persons with AIDS program (HOPWA)

PUBLIC HEALTH AND SAFETY DIVISION

- Environmental Laboratory
- Public Health Laboratory
- Serology/Newborn Screening/Preparedness
- Microbiology/Molecular Biology
- Vaccine Information Resources
- Cancer Control Program
- MT Central Tumor Registry
- Environmental Public Health Tracking Program
- MT Breast & Cervical Health Program

- Cardiovascular Health Program
- Diabetes Prevention
- EMS Service Licensing
- EMS Trauma System
- EMS Prevention Program
- Montana Tobacco Use Prevention Program
- Communicable Disease/Epidemiology Programs
 - Communicable Disease Surveillance
 - HIV/AIDS Surveillance
 - Montana Antibiotic Resistance Awareness
 - Tuberculosis Prevention & Control
- Food Safety Education
- Retail Food Service Establishments
- Wholesale Food Manufacturing Establishments
- Food Security Preparedness
- Public Accommodations, Trailer Courts
- Swimming Pools, Spas, Swimming Areas
- Tattooing, Cosmetic Tattooing, Body Piercing, Ear Piercing
- Schools, Daycares, Community Homes
- STD Prevention
- HIV Prevention
- HIV / AIDS Treatment
- Champions for Progress
- Preventive Health Block Grant
- Methamphetamine Cleanup Program
- Maternal & Child Health Bureau
 - Title V Block Grant to States
 - Discretionary Grant Programs
 - Women and Infants
 - Child Health and Safety
 - Oral Health
 - Children with Special Health Care Needs
 - Adolescents
 - Health Promotion and Disease Prevention
 - Data, Evaluation & Epidemiology
 - Traumatic Brain Injury
 - Women's Health
 - Genetics
- Newborn Metabolic & Hearing Screening
- Maternal and Child Health Needs Assessment
- Public Health Home Visiting
- Fetal Infant Child Mortality Review (FICMR)
- Early Childhood Comprehensive System (ECCS)
- Nutrition/WIC Special Supplemental Nutrition Program

- WIC Farmers' Market Nutrition Program (FMNP)
- Montana Statewide Family Planning Program
- Unintended Pregnancy Prevention/Teen Pregnancy Prevention
- Montana Public Health Training Institute
- Public Health Informatics
- Mountain States Genetic Network
- Parents Lets Unite for Kids (PLUK)
- Shodair Hospital Genetics Program

QUALITY ASSURANCE DIVISION

- Day Care Licensure and Certification
- Network Adequacy
- Independent Peer Review
- Certificate of Need
- Rural Hospital Flexibility Program
- Medical Marijuana Program
- Life Safety Plan Review for all Licensed Facilities
- Health Care Facility Licensing
 - Adult Day Care
 - Adult Foster Care
 - Home Infusion Therapy Services
 - Infirmaries
 - Outpatient Chemical Dependency Treatment Centers
 - Inpatient Chemical Dependency Centers
 - Chemical Dependency Transitional Living Centers
 - Assisted Living Facilities
 - Infirmaries
 - Intermediate Care Facility for the Developmentally Disabled
 - Mental Health Centers
 - Outdoor Behavioral Programs
 - Outpatient Centers for Primary Care
 - Residential Treatment Facilities
 - Retirement Homes
 - Specialty Mental Health Facilities
 - Outpatient Centers for Surgical Services
 - Critical Access Hospitals
 - End-Stage Renal Dialysis Facilities
 - Home Health Agencies
 - Hospices
 - Hospitals
 - Long-Term Care Facilities
 - Maternity Group Homes
- Residential Care Facility Licensing
 - Adult Foster Care

- Chemical Dependency Treatment Centers
- Mental Health Centers
- Residential Treatment
- Specialty Mental Health
- Youth Care Facilities
- Youth Shelter Care
- Therapeutic Youth Group Homes
- Community Homes for Persons with Developmental Disabilities
- Group Homes for Developmentally Disabled or Physically Disabled
- Certifying Health Care Facilities
- Office of Fair Hearings
- Surveillance and Utilization Review
- Third Party Liability
- Program Integrity
- HIPAA
- Advance Directives and Comfort One
- Feeding Assistance Program
- Nurse Aide & Home Health Aide Program & Registry
- Radiographic Registration

SENIOR AND LONG TERM CARE DIVISION

- Financial Planning
- Education
 - Aging Horizons
- Care Facilities
 - Adult Day Care
 - Adult Foster Care
 - Assisted Living
 - Nursing Homes
 - Shared Housing
 - Veteran's Homes
- Financial Arrangements
 - Medicaid Waiver
 - Reverse Annuity Mortgages
- Home Health Care Services
 - Community Alternatives
 - Home Dialysis Attendants
 - Home Health Aides
 - Home Health Services
 - Home (Accessibility) Modifications
 - Homemaker Services
 - Hospice Services
 - Meals on Wheels Programs
 - Medicaid Waiver

- Medical Equipment Loan/Purchase
- Personal Care Attendants
- Respite Care
- Shopping Assistance
- Skilled Nursing Service
- Transportation Services
- Adult Protective Services
 - Adult Protective Services Program
 - Consumer Fraud
 - Elder And Disable Adult Abuse/Neglect
 - Long Term Care Ombudsman
- Alzheimers' Grant
- The Information, Assistance And Referral Program
- Governor's Advisory Council on Aging
- The 39th Annual Governors Conference on Aging
- Legal Service Developer Program
- Aging Food and Nutrition Programs
- State Health and Insurance Assistance Program (SHIP)
- Swing Beds
- Office on Aging

TECHNOLOGY SERVICES DIVISION

- Provides data and systems support services for the department